

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Peter Hoy (S7)	Team: Squad #14	CCRB Case #: 201007184	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 05/22/2010 2:45 AM	Location of Incident: [REDACTED]	Precinct: 23	18 Mo. SOL 11/22/2011	EO SOL 11/22/2011	
Date/Time CV Reported Sun, 05/23/2010 1:07 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 05/27/2010 2:29 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Victor Charles	06096	941538	023 PCT
2. An officer			023 PCT
3. SGT Ramiro Ruiz	05320	939384	023 PCT
4. SGT Robert Agate	03869	941317	023 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Keung Ng	05522	913689	QNS CT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Ramiro Ruiz	Abuse: Sgt. Ramiro Ruiz stopped § 87(2)(b)	[REDACTED]
B.SGT Robert Agate	Abuse: Sgt. Robert Agate stopped § 87(2)(b)	[REDACTED]
C.SGT Robert Agate	Force: Sgt. Robert Agate struck § 87(2)(b) with an asp.	[REDACTED]
D.POM Victor Charles	Abuse: PO Victor Charles frisked § 87(2)(b)	[REDACTED]
E.POM Victor Charles	Abuse: PO Victor Charles searched § 87(2)(b)	[REDACTED]
F.POM Victor Charles	Force: PO Victor Charles used physical force against § 87(2)(b)	[REDACTED]
G.SGT Ramiro Ruiz	Force: Sgt. Ramiro Ruiz used physical force against § 87(2)(b)	[REDACTED]
H.SGT Robert Agate	Force: Sgt. Robert Agate used physical force against § 87(2)(b)	[REDACTED]
I.SGT Ramiro Ruiz	Force: Sgt. Ramiro Ruiz used pepper spray against § 87(2)(b)	[REDACTED]
J. An officer	Force: An officer restricted § 87(2)(b) breathing.	[REDACTED]
K. An officer	Force: An officer stabbed § 87(2)(b) with an unknown instrument.	[REDACTED]
L. An officer	Force: An officer used a chokehold against § 87(2)(b)	[REDACTED]
M. An officer	Force: An officer restricted § 87(2)(b) breathing.	[REDACTED]

### Case Summary

On May 22, 2010, at approximately 2:45 a.m., in the vicinity of [§ 87(2)(b)] in Manhattan, [§ 87(2)(b)] was stopped by Sgt. Ramiro Ruiz and Sgt. Robert Agate (**Allegations A and B**), who at the time both held the rank of police officer and were assigned to the 23<sup>rd</sup> Precinct. Also present was PO Victor Charles from the same command. During the stop, Sgt. Agate struck [§ 87(2)(b)] with an asp (**Allegation C**), PO Charles frisked and searched him (**Allegations D and E**), all three officers used physical force against him (**Allegations F, G, and H**), and Sgt. Ruiz pepper sprayed him (**Allegation I**). Additionally, an unidentified officer allegedly restricted his [§ 87(2)(b)] breathing by pressing a knee into his back (**Allegation J**), allegedly stabbed him with an unknown object (**Allegation K**), and placed him in a chokehold, which also restricting his breathing (**Allegations L and M**). [§ 87(2)(b)]

[§ 87(2)(b)]

[§ 87(2)(b)]

On May 23, 2010, [§ 87(2)(b)] filed this complaint with IAB by phone and it was assigned log number 10-26580. On May 27, 2010, it was referred to the CCRB and assigned to Inv. Chanan Berkovits; however, on August 18, 2010, the case was closed without a full investigation at the request of [§ 87(2)(b)] criminal attorney.

The Internal Affairs Bureau also conducted a concurrent investigation under log number 10-26171 into [§ 87(2)(b)] allegations that the officers “flaked” narcotics on him and stole money from him. [§ 87(2)(b)]

[§ 87(2)(b)]

On July 27, 2015, at [§ 87(2)(b)] request, the CCRB case was reopened because some of his allegations fell under the criminal exception to the statute of limitations. At that time, the case was assigned to Inv. Tiffany Dempsey because Inv. Berkovits has resigned from the agency. On October 12, 2015, the case was reassigned to Investigative Manager Peter Hoy.

### Mediation, Civil and Criminal Histories

- [§ 87(2)(b)]
- [§ 87(2)(b)]

### Civilian and Officer CCRB Histories

- Neither [§ 87(2)(b)] nor [§ 87(2)(b)] has been involved in any other CCRB complaints (BR 02).
- Sgt. Ruiz has been a member of service for ten years and has been the subject of 27 allegations in 12 CCRB cases. These include two other allegations of stopping an individual and six other force allegations, one of which involved the alleged use of his asp: case 201104637. None of the force allegations were substantiated. In case 201505505, a stop allegation was substantiated and the Board recommended Command Discipline A; the NYPD’s disposition is not yet known. Two unlawful arrest allegations were also substantiated against Sgt. Ruiz: in case 210311028, the Board recommended formalized training and the NYPD imposed Instructions, and in case 201505505, the Board recommended Command Discipline A and the NYPD disposition is not yet known.
- PO Charles has been a member of service for nine years and has been the subject of 16 allegations in seven CCRB cases. These include one other allegation each of stop, frisk, and search, none of which were substantiated. These also include three other allegations of force. Two allegations involving the use of a nightstick were unsubstantiated, but in case 201501048, a chokehold allegation was

- Sgt. Agate has been a member of service for nine years and has been the subject of 16 allegations in seven CCRB cases. These include two other stop allegations and three other force allegations, none of which were substantiated.

[illegible]

### Explanation of Subject Officer Identification

During most of the struggle, § 87(2)(b) could not see which officer took which actions. However, based on the officers' statements, the investigation was able to attribute some of the allegations to specific officers. Because PO Charles, Sgt. Ruiz, and Sgt. Agate all admitted to participating in the struggle to apprehend § 87(2)(b), **Allegations F, G, and H** are pleaded against them, respectively. Sgt. Agate admitted using his asp, Sgt. Ruiz admitted using pepper spray, and PO Charles admitted frisking and searching § 87(2)(b). **Allegations C, D, E, and I** are pleaded accordingly.

CCRB – Confidential



recall the officers discussing any conditions prior to going out on patrol, but based on his prior experience, he knew the building was a “high-drug” location where the officers had made previous narcotics arrests. He recalled it being a warm evening and that § 87(2)(b) was wearing a “snorkel-type” heavy winter coat, with his hood up and hands in his pockets. Sgt. Ruiz said § 87(2)(b) was looking around a lot, back and forth in different directions, walked at a brisk pace, and then headed into a NYCHA courtyard. Sgt. Ruiz explained that being on NYCHA property meant “from the sidewalk on,” and that without a lawful reason to be there, it is a violation. Before pulling over, the officers had some discussion about what Sgt. Ruiz saw, but Sgt. Ruiz did not recall details of the discussion. When they pulled over, Sgt. Ruiz exited and was the first to approach § 87(2)(b) who was in the vicinity of the intersection of the street sidewalk and the courtyard. He caught up to § 87(2)(b) about 10 feet from the entrance of 230 East 102nd Street. Sgt. Ruiz identified himself, asked § 87(2)(b) if he lived in the area or had ID. Sgt. Ruiz was concerned § 87(2)(b) might be armed, so for his safety, he asked § 87(2)(b) to remove his hands from his pockets. § 87(2)(b) became aggressive and combative, stating, “You’re not taking me. I’m not coming.” Sgt. Ruiz moved closer to § 87(2)(b) but before making any physical contact with him, § 87(2)(b) pushed Sgt. Ruiz, at which point, Sgt. Ruiz considered § 87(2)(b) under arrest for obstructing governmental administration and possibly trespassing. Sgt. Ruiz did not know where the other officers were at this time.

Sgt. Agate said he observed § 87(2)(b) for about a minute before exiting the car to approach and he was suspicious of him for several reasons. He corroborated that it was a warm night and that § 87(2)(b) wore a “huge coat.” He also said § 87(2)(b) was “trying to avoid” the officers, and described § 87(2)(b) looking at the officers three times, making a distinct and sharp left turn from the sidewalk into the NYCHA development, and beginning to walk a little faster. He described § 87(2)(b) facial expressions as suspicious, explaining that § 87(2)(b) “was watching us without trying to look at us” and kept looking back at the officers. Sgt. Agate explained that it was a trespassing offense to walk through NYCHA property if you do not live there. Sgt. Agate also noted that at the time, there was a “rash of delivery-guy robberies and stuff like that.” Based on this and the way § 87(2)(b) appeared to avoid the officers, Sgt. Agate suspected § 87(2)(b) may have just robbed somebody. Sgt. Agate did not know how he knew about the robberies or if there was a robbery report that night, but he speculated that his field intelligence officer may have told him about it.

PO Charles initially remained in the vehicle while Sgt. Ruiz and Sgt. Agate approached § 87(2)(b). He said he did not know why the officers approached § 87(2)(b).

§ 87(2)(g)

To conduct a common law inquiry, an officer must have an objective credible reason. To conduct a stop, an officer must have reasonable suspicion that the person has committed, is about to commit, or is committing a crime (*People v. DeBour*, 40 N.Y.2d 210 (1976)) (BR 03). A person is guilty of criminal trespass in the third degree when he knowingly enters or remains unlawfully in a building or upon real property where the building is used as a public housing project in violation of conspicuously posted rules

or regulations governing entry and use thereof (NYS Penal Law § 140.10(e)) (BR 04). Although a person's mere presence in a NYCHA building does not justify a common law inquiry, other factors, such as evidence of prior criminality in the building, may justify one. A person standing in the vestibule of a drug-prone building may be approached by the police, questioned about residency, and required to produce identification, even if that individual has not engaged in conduct indicative of criminality (People v. Ventura, 2010 NY Slip Op 20514 (2010) (BR 05); People v. Hendricks, 43 AD3d 361, 841 N.Y.S.2d 94 (2007) (BR 06).

§ 87(2)(g)

§ 87(2)(g)

**Allegation D – Abuse of Authority: PO Victor Charles frisked** § 87(2)(b)

**Allegation E – Abuse of Authority: PO Victor Charles searched** § 87(2)(b)

§ 87(2)(b) alleged that he was frisked and searched immediately after he fell to the ground, which was when the officers first stopped him and before he was handcuffed. He described an officer patting his front waistband, announcing that he did not have a gun, reaching into his pockets, and removing 200 dollars. § 87(2)(b) did not describe seeing any officer frisk or search § 87(2)(b) said he could not see or describe the officer who did this, but PO Charles admitted to frisking and searching § 87(2)(b) PO Charles said he did so, but only later in the stop after § 87(2)(b) was under arrest.

Generally, to conduct a search, an officer must have probable cause that the person has committed a crime. Short of this, to conduct a frisk, an officer must have reasonable suspicion that a suspect is armed (People v. DeBour, 40 N.Y.2d 210 (1976)) (BR 03). Following an arrest, an officer should immediately perform a field frisk and search of the prisoner for weapons, evidence and/or contraband (Patrol Guide section 208-03) (BR 07).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation C – Force: Sgt. Robert Agate struck § 87(2)(b) with an asp.**

**Allegation F – Force: PO Victor Charles used physical force against § 87(2)(b)**

**Allegation G – Force: Sgt. Ramiro Ruiz used physical force against § 87(2)(b)**

**Allegation H – Force: Sgt. Robert Agate used physical force against § 87(2)(b)**

According to § 87(2)(b) when the officers first approached him, an officer struck him in the head with what felt like a pipe and what he later concluded was an asp. § 87(2)(b) said he subsequently resisted arrest and repeatedly tried to flee because he did not realize they were police. He said the subsequent struggle lasted 15 to 17 minutes and that during this time, officers used physical force against him. He said officers he could not see or describe grabbed his collar, scratched his neck, punched him an unknown number of times in neck and face, kicked him in the ribs repeatedly, and kicked out his legs, causing him to drop to ground. § 87(2)(b) said he landed on his neck, then on his back. § 87(2)(b) alleged that an officer then grabbed his feet and pulled him between two cars, where he kicked the hands of the officer who was holding his feet, thus freeing his feet, and rolled towards the sidewalk in an attempt to flee. § 87(2)(b) said that during the struggle, an officer identified by the investigation as Sgt. Agate struck § 87(2)(b) with an asp an unknown number of times in the face, head, shoulders, and also in his forearm when he tried to block the strikes with his arms. § 87(2)(b) could only provide limited details about his attempts to flee because he was too disoriented at the time of the incident to recall. In his civil lawsuit deposition, § 87(2)(b) denied that he ever punched or kicked the officers. However, § 87(2)(b) admitted that in addition to trying to get away from the officers, he grabbed the arm of an officer, identified by the investigation as Sgt. Ruiz, twisted it, held it under his armpit with his bicep and forearm, and refused to let go. § 87(2)(b) said Sgt. Ruiz repeatedly told him to let go, slapped him, and punched him in the face, but that in response, he moved his body back and forth to tighten his grip on the officer's arm. He admitted that he did not let go until after he was pepper sprayed (analyzed separately in Allegation J) and a uniformed officer arrived on scene.

§ 87(2)(g)

§ 87(2)(b) said that as a result of the end of the incident, he had head pain and swelling, was bleeding from his nose, eye, and the back of his head, had swollen eyes, had scratches on the front and sides of his neck, and had a laceration to his arm. § 87(2)(b) said he saw EMTs at the stationhouse, but that they only provided him with an ice pack and gave him no other treatment. He said that from Central Booking, he was taken to Bellevue Hospital, but that the nurse only treated the bruising on his hand and did not provide care for his other injuries. § 87(2)(b) said that about a month later, he received medical treatment regarding his head while in DOC custody.

§ 87(2)(b) also said that following the incident, IAB investigators took photos of his injuries. The photos contained in the IAB case files include an image of the top of § 87(2)(b) head (BR 22, BR 23, and BR 24). There appears to be an injury to the back of his head, but the quality of the image is such that it is difficult to discern the shape and extent of the injury.

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

PO Charles recalled § 87(2)(b) taking a defensive stance with fists raised and announcing, “I’m not going back. Let’s do this.” All three officers then attempted to handcuff § 87(2)(b). Sgt. Ruiz said § 87(2)(b) kicked and elbowed him, causing him to fall to the ground numerous times. He did not recall what contact occurred between § 87(2)(b) and the other officers, but he recalled § 87(2)(b) using his elbows and legs to resist handcuffing. Sgt. Agate said § 87(2)(b) swung at and kicked all three officers. PO Charles said that § 87(2)(b) punched him several times in the head and face, struck Sgt. Ruiz, and made physical contact with Sgt. Agate in what he described as a “brawl.” The officers were consistent that during the struggle, § 87(2)(b) and PO Charles fell to the ground. PO Charles said that once § 87(2)(b) was on the ground, the officers were initially only able to handcuff one arm and that § 87(2)(b) waved his arm, causing the second handcuff to fly around. § 87(2)(g)

PO Charles admitted grabbing § 87(2)(b) by the torso to take him to the ground the first time, and admitted striking § 87(2)(b) but he could not identify where he struck him. Sgt. Ruiz admitted using the following physical force: he initially tried to grab § 87(2)(b) to gain control of his arms; he punched § 87(2)(b) but not in the face or head; he “used his knees” to strike § 87(2)(b) lower extremities and thigh area while on the ground to try to subdue him, but denied striking him in any other manner while he was on the ground; and he grabbed § 87(2)(b) from behind in “a bear hug” to bring him to the ground a second time after § 87(2)(b) rose from the ground and tried to flee. Sgt. Ruiz also recalled that at one point, § 87(2)(b) was on the ground, pinned against a parked car. Sgt. Agate described using verbal commands and his asp during the struggle, but said he only used his asp after § 87(2)(b) began fighting the officers. He said he struck § 87(2)(b) in the legs and hips four to five times, in order to get him to the ground so the officers could arrest him. Sgt. Agate denied hitting § 87(2)(b) in the head and did not describe using other physical force against § 87(2)(b). Sgt. Agate did not remember seeing a wound on § 87(2)(b) head or remember if he requested medical assistance. Sgt. Ruiz denied that § 87(2)(b) was struck in the head and PO Charles did not remember if anyone used an asp.

It is undisputed that PO Charles was injured. PO Charles said he sustained a sprained wrist, a bruised knee, and shoulder pain. § 87(2)(b)

§ 87(2)(b)

Only the amount of force necessary to overcome a suspect’s resistance may be used to effect an arrest (Patrol Guide section 203-11) (BR 08).

§ 87(2)(g)

§ 87(2)(g)



§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

**Allegation I – Force: Sgt. Ramiro Ruiz pepper sprayed** § 87(2)(b)

§ 87(2)(b) alleged that an officer pepper sprayed him. He admitted that at the time he was pepper sprayed, he was resisting arrest and struggling with the officers on the ground. He described that he had grabbed one of the officer’s arms and was holding it between his body and bicep, refusing to let the officer go. He said that an officer sprayed him for 30 seconds in one long stream.

Sgt. Ruiz admitted pepper spraying § 87(2)(b). He said he did so because § 87(2)(b) was violently resisting arrest. Sgt. Ruiz said that at the point he used his pepper spray, he had been struggling with § 87(2)(b) for a prolonged period of time and was “almost to exhaustion.” He described the pepper spray as a last resort. He did not admit to spraying him for 30 seconds straight.

Officers may use pepper spray in an arrest situation where physical presence and verbal commands have not been effective in overcoming physical resistance. It may be used only where the officer reasonably believes it is necessary to protect from unlawful use of force, effect an arrest, or establish physical control of a subject resisting arrest, establish physical control of a subject attempting to flee. Officers should deploy pepper spray in two one-second bursts (Patrol Guide section 212-95) (BR 09).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

**Allegation J – Force: An officer restricted § 87(2)(b) breathing.**

According to § 87(2)(b) at one point in the struggle, he was on the ground between two cars with the officers. He attempted to roll away from the officers in order to flee, but an officer placed his knee on § 87(2)(b) back. He said that this, in combination with the fact that he was exhausted from the physical altercation, made it so that he could not breathe.

§ 87(2)(b) said she could not see § 87(2)(b) at this point in the incident.

§ 87(2)(g)

**Allegation K – Force: An officer stabbed § 87(2)(b) with an unknown instrument.**

**Allegation L – Force: An officer used a chokehold against § 87(2)(b)**

**Allegation M – Force: An officer restricted § 87(2)(b) breathing.**

According to § 87(2)(b) while struggling with the officers on the ground between the cars, an officer lunged toward his chest, holding an object that § 87(2)(b) could not see. § 87(2)(b) said he lifted his forearm to block this stabbing motion, and the object punctured his arm. § 87(2)(b) said that moments later, he noticed an object stuck in the back of his forearm; however, he also said that he never saw the object. § 87(2)(b) said that one of the officers told the officer who stabbed him not to do it, but that the officer who stabbed him said he was going to make it look like someone stabbed § 87(2)(b) and left him in the street. § 87(2)(b) admitted that he then grabbed that officer's arm and held it, refusing to let go. In response, the officer allegedly grabbed the front of § 87(2)(b) throat and dug his nails into § 87(2)(b) neck, preventing his ability to breathe for about 30-35 seconds, before letting go.

§ 87(2)(b) said he sustained a laceration as a result. During his CCRB interview, a two- to four-inch scar was visible on § 87(2)(b) left forearm, which § 87(2)(b) attributed to the officer stabbing him.

§ 87(2)(b)

§ 87(2)(b) recalled seeing an officer wrap his arm around § 87(2)(b) neck; however, she said she observed this at a different point in the struggle, and not at the time that § 87(2)(b) alleged it occurred. § 87(2)(b) said she could not see § 87(2)(b) when he was on the ground between the cars.

§ 87(2)(g)

§ 87(2)(g)

Squad: 14

Investigator:

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Signature

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Date

Squad Leader:

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